

## **REMARKS**

Claims 1-45 will be pending before the Examiner upon entry of the above amendments. Claims 1, 4, 5, 6, 9, 10, 17, 20, 21, 28, 31 and 32 have been amended. Support for the amendments to the claims can be found through out the specification and claims as originally filed. Thus, the amendments to the claims are fully supported by the instant specification and no new matter has been introduced.

### **Restriction Requirement:**

The Examiner has required an election under 35 U.S.C. § 121 of one of the following inventions:

- I. Claims 1-38, drawn to a method of promoting the growth of a population of cells or treating an inflammatory pathology comprising contacting at least one cell with a protein composition, classified in class 514, subclass 12.
- II. Claims 39-45, drawn to a method of preparing a pharmaceutical composition comprising combining at least one polypeptide effective in treating inflammatory pathology with a pharmaceutically acceptable carrier, classified in class 424, subclass 198.1.

According to the Examiner, the inventions are distinct, each from the other.

In addition, the Examiner has required the Applicants to elect a single polypeptide sequence.

In response, Applicants hereby elect, without traverse, the invention of Group I, claims 1-38, which are drawn to a method of promoting the growth of a population of cells or treating an inflammatory pathology comprising contacting at least one cell with a protein composition, classified in class 514, subclass 12.

Applicants also hereby provisionally elect, with traverse, the amino acid sequence of SEQ ID NO: 2 for the examination purpose.

With respect to the Examiner's further request of electing one amino acid sequence for examination, Applicants respectfully traverse and request that amino acid sequences of SEQ ID NOs: 2, 4, 6, 8, 10, 12 and 14 be examined together as they pertain to the elected invention. As demonstrated in the amended claims, the elected invention relates to a combination of FGFCX and FCTRX polypeptides, thus, at least two sequences (FGFCX and

FCTRX, respectively) have to be elected for examination purpose. SEQ ID NO: 2 is a FGFCX polypeptide sequence, and SEQ ID NOs: 4, 6, 8, 10, 12 and 14 belong to the FCTRX family. Since SEQ ID NOs: 4, 6, 8, 10, 12 and 14 share significant sequence identity, examining them together will not impose a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, August 2001, revised October 2005) states:

*Augest 2006*  
If the search and examination of ~~an~~ entire application can be made without serious burden, the examiner must examine ~~on~~ the merits, even though it ~~includes claims to~~ independent or distinct inventions.  
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Thus, Applicants request that all the amino acid sequences of SEQ ID NOs: 2, 4, 6, 8, 10, 12, and 14 be elected for the examination purpose. In the alternative, Applicants request that election of a single SEQ ID NO be considered a species election, and the remaining SEQ ID NOs of the claimed invention be re-entered into the genus once the elected sequence is deemed allowable. Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim pursuant to 37 C.F.R. § 1.141.

### CONCLUSION

Applicants respectfully request that the present amendments and remarks be made of record in the instant application. Applicants submit that this application is in condition for allowance and such action is respectfully requested. If any issues remain in connection herewith, the Examiner is respectfully invited to telephone the undersigned to discuss the same.

Respectfully submitted,

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